

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY AT&T COMMUNICATIONS OF	)	
THE SOUTH CENTRAL STATES, INC. AND	)	
TCG OHIO FOR ARBITRATION OF CERTAIN	)	CASE NO.
TERMS AND CONDITIONS OF A PROPOSED	)	2000-465
AGREEMENT WITH BELLSOUTH	)	
TELECOMMUNICATIONS, INC. PURSUANT	)	
TO 47 U.S.C. SECTION 252	)	

**POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.**

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**POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. (“BellSouth”) submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with the Section 252 of the telecommunications Act of 1996, 47 U.S.C. § 252.

**I. STATUTORY OVERVIEW**

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.<sup>1</sup> After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.<sup>2</sup> The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>3</sup> The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties.”<sup>4</sup> A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes

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<sup>1</sup> 47 U.S.C. § 251(c)(1).

<sup>2</sup> 47 U.S.C. § 252(b)(2).

<sup>3</sup> See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

<sup>4</sup> 47 U.S.C. § 252(b)(2).

within 25 days after the state commission receives the petition.<sup>5</sup> The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.<sup>6</sup>

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.<sup>7</sup>

## II. ISSUES AND POSITIONS

### **Issue 1: Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?**

BellSouth's position regarding the payment of reciprocal compensation for calls that transit an Internet Service Provider is set out in detail in BellSouth witness Ruscilli's testimony. (See Ruscilli Prefiled Direct, pages 2-14). In that testimony, Mr. Ruscilli explains in detail why such calls are not local calls, but rather are interstate calls that are not subject to reciprocal compensation. Nevertheless, as Mr. Ruscilli states in his testimony, rather than taking the Commission's time to relitigate the issue, and without waiving its right to appeal or to seek judicial review on this issue, BellSouth is willing to agree to abide by the final order issued by this Commission in the ICG Arbitration, Case No. 99-218 on March 2, 2000.

Indeed, the Hearing Officer raised this issue at the beginning of the cross-examination of AT&T witness Follensbee, asking whether the issue needed to be pursued further. (Transcript,

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<sup>5</sup> 47 U.S.C. § 252(b)(3).

<sup>6</sup> 47 U.S.C. § 252(b)(4).

<sup>7</sup> 47 U.S.C. § 252(a).

page 17). The reason that the matter needs to be addressed here is because, while the Commission in its ICG Order directed the parties to track payments resulting from ISP-bound traffic, with the idea that such payments would be “trued-up” when the FCC ultimately sorts this matter out, AT&T refused to agree to the “track and true-up” concept. (Transcript, page19). In essence, AT&T said it had no good way to track these minutes, and therefore BellSouth should simply pay for them, without the possibility of a “true-up.” *Id.*

Assuming for the moment that AT&T is correct, and that it has made no provisions to track minutes transiting ISPs for which AT&T intends to charge BellSouth reciprocal compensation, the penalty for such a failure should fall on AT&T, not on BellSouth. AT&T acknowledged that it knew that whatever the outcome of this arbitration, the result would be retroactive at least to August 14, 2000. (Transcript, page 20). AT&T further acknowledged that this issue had been in contention since well before that date. *Id.* Finally, AT&T acknowledged that it knew that this Commission had ordered a “track and true-up” solution as long ago as March, 2000. *Id.* Notwithstanding all of this, AT&T has not tracked any of these minutes of use originated by BellSouth’s end users and directed to ISP’s served by BellSouth. (Transcript, page 21). AT&T’s witness did not deny that such information could have been tracked, but rather made excuses that AT&T might not actually know in every instance whether a call was headed to an ISP. *Id.* The witness did agree that for the “most part” AT&T could identify the telephone numbers associated with ISPs (*Id.*), but it had not done so.

The bottom line here is that AT&T knew that this Commission had ordered a “track and true-up” approach to ISP-bound traffic. AT&T knew that it was litigating this issue with BellSouth. AT&T knew that it would want to collect reciprocal compensation, if it prevailed, for all such traffic going back to August, 2000, yet it did not keep records that would allow it to

“track and true-up” this revenue. Quite frankly, it is not at all clear how AT&T would know what minutes it had not been compensated for, if it did not know what minutes transited an ISP, but that is evidently its position. If this is true, and AT&T cannot track and true-up the ISP-bound minutes for which it desires to collect reciprocal compensation, then AT&T should bear the burden of that failure, and not BellSouth. In such circumstances, the Commission should simply not require BellSouth to pay reciprocal compensation for any such traffic that cannot be specifically identified by AT&T.

**Issue 4: What does “currently combines” mean as that phrase is used in 57 C.F.R. §51.315(b)?**

**Issue 5: Should BellSouth be permitted to charge AT&T a “glue charge” when BellSouth combines network elements?**

Issue 4 is one of the more remarkable issues that AT&T has raised, if for no other reason than the ingenuity with which it has attempted to twist the Code of Federal Regulations (CFR). It is absolutely clear that BellSouth has no obligation to combine any Unbundled Network Elements (UNE) for AT&T that are not currently in fact combined to serve a particular location or customer.

Section 251(c)(3) of the 1996 Act requires incumbent LECs such as BellSouth to “provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.” From the plain wording of the 1996 Act, there is no doubt that the CLECs are required to combine the network elements for themselves. Notwithstanding this very plain language, the FCC initially interpreted the 1996 Act to require the incumbent LECs to combine the UNEs, upon the request of a CLEC. The FCC’s interpretation was codified in FCC Rules 51.315(c), which provides in pertinent part that: “Upon request, an incumbent LEC shall perform the functions necessary to combine

unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network....”

CFR § 51.315(c), however, was vacated by the 8<sup>th</sup> Circuit Court of Appeals in *Iowa Utils. Bd. v. FCC*, 120 F.3<sup>rd</sup> 753 (8<sup>th</sup> Cir. 1997) *rvsd in part*, 525 U.S. 366 (1999). The reversal of this rule was not a part of the appeal to the Supreme Court of the United States and that part of the 8<sup>th</sup> Circuit's decision was not reviewed, vacated or reversed. However, the 8<sup>th</sup> Circuit, as part of its review of those sections of its decision that were reviewed by the Supreme Court and remanded for further action, reconsidered, essentially on its own motion, its ruling vacating this particular subsection. That is, even though it was not required to do so, the 8<sup>th</sup> Circuit reviewed again its decision to vacate CFR §51.315 (c), and confirmed its earlier ruling. The 8<sup>th</sup> Circuit Court of Appeals said:

Rule 51.315(b) prohibits the ILECs from separating previously combined network elements before leasing the elements to competitors. The Supreme Court held that 51.315(b) is rational because “[section] 251(c)(3) of the Act is ambiguous on whether leased network elements may or must be separated.” *AT&T Corp*, 525 U.S. at 395. Therefore, under the second prong of *Chevron*, the Supreme Court concluded 51.315(b) was a reasonable interpretation of an ambiguous statute.

Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, “An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.: Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall “combine such elements.” It is not the duty of the ILEC to “perform the functions necessary to combine unbundled network elements in any manner” as required by the FCC's rule. See 47 C.F.R. §51.315(c).

It is hard to imagine how the Court could have been much clearer on this point. Even the FCC understood what it had been told by the 8<sup>th</sup> Circuit in its first order addressing these rules. In the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC

99-238, released November 5, 1999 (“UNE Remand Order”), the FCC confirmed that ILECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth’s network. As the FCC made clear, Rule 51.315(b) applies to elements that are “in fact” combined, stating that “[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form.” (¶ 480). The FCC declined to adopt a definition of “currently combines,” as AT&T proposes in this case, that would include all elements “ordinarily combined” in the incumbent’s network. *Id.* (declining to “interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are ‘ordinarily combined’...”). No other conclusion could reasonably be reached.

AT&T’s position with regard to this issue is that, irrespective of the clear language of the rules, the court decisions regarding the rules, and the FCC’s own view of its rules, that this Commission should order BellSouth to combine UNEs for AT&T, if the particular type of UNEs in question are combined anywhere in BellSouth’s network. AT&T’s logic is that this ought to be done either (1) through some interpretation of Rule 51.315(b) or (2) the Commission should just do it “under their own authority.” (Transcript, page 26).

With regard to AT&T’s position regarding an interpretation of the federal rule, if the Commission interpreted Rule 51.315(b) the way AT&T suggests, this means that this Commission would have to interpret a rule that clearly only addresses the separation of already combined UNEs, in a manner that would simply turn the rule on its head. Lewis Carroll would be proud of such an interpretation. According to AT&T, although the rule clearly says that ILECs can’t separate UNEs, what the rule really means is that ILECs have to put UNEs together. AT&T’s blatant misinterpretation is pure nonsense.

AT&T's other plea, that the Commission just require this on its own authority, is equally interesting. This is an arbitration that is being conducted under the 1996 Act. Section 252(c) establishes the standards for arbitration and specifically provides in relevant part that any resolution of an arbitration meets the requirements of Section 251, including the regulations prescribed by the FCC. Here AT&T wants the Commission to ignore the language of the 1996 Act and to specifically contradict the interpretation that the FCC has placed on its own rules. The Commission should decline to do so.

Clearly the resolution of Issue 4 is that BellSouth cannot be compelled to combine, free of charge, UNEs that AT&T buys. BellSouth agrees that it cannot separate elements that are already in fact combined and serving the particular location or customer in question unless requested to do so by the CLEC.

With regard to Issue 5, BellSouth's position is very straightforward. It has no obligation to combine UNEs at the whim or request of AT&T, as was discussed in connection with Issue 4, above. Nevertheless, BellSouth is willing to do this combining for AT&T, provided that AT&T pays a fair market price for the service. The difference between this fair market price and the TELRIC-based prices of the UNEs is often referred to as the "glue charge." (Ruscilli Prefiled Direct, at page 20). No prices have been proposed by BellSouth for this service in this proceeding because AT&T refuses to concede that such charges are appropriate. Nevertheless, BellSouth remains ready to provide this service at a fair market price to AT&T should AT&T ask for such service.

BellSouth acknowledges that this Commission in the ICG/BellSouth arbitration held that "BellSouth should combine previously uncombined elements for a reasonable cost-based fee in situations where those elements currently are not combined in the BellSouth network." ICG

Order, dated March 2, 2000, Case No. 99-218. BellSouth would note that the 8<sup>th</sup> Circuit's order referenced above was issued several months after the Commission's ICG decision (*Id.* at 21). If the Commission had ordered BellSouth to combine UNEs at no charge, or even TELRIC-based charges, such a decision would conflict with the 8<sup>th</sup> Circuit's order. However, as indicated, BellSouth is willing to combine elements for AT&T at a market-based rate, which the Commission, if faced with the issue, could conclude constitutes a "reasonable cost-based" rate. In these circumstances, there is no difference between BellSouth's position and that adopted by the Commission in the ICG case.

AT&T's position with regard to Issue 4 is contrary to the law and good sense. BellSouth's position should be adopted on this issue. Once Issue 4 is decided in BellSouth's favor, Issue 5 is easily resolved. Since BellSouth has no obligation to combine UNEs for AT&T, then the only appropriate price that can be charged should BellSouth decide to provide such a service is the fair market price for such services.

**Issue 6: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs? (UNEs, Attachment 2, Section 2.11)**

This issue involves the situation where AT&T has purchased tariffed special access services from BellSouth and is using those services to provide both local and long distance service. (Transcript, pages 35-36). Special access services are available on a month-to-month basis, but they can also be purchased under what can be called "volume and term" contracts. The obvious advantage to a volume and term contract is that AT&T obtains a lower unit price for the special access services it purchases when it purchases them in "bulk." *Id.* Now AT&T wishes to convert a portion of the special access services that it purchased under a contract to lower UNE rates. (Transcript, page 36). AT&T is correctly concerned, however, that by converting some of its special access services to UNEs, that

BellSouth's monthly billings to AT&T for the remaining tariffed special access services will fall below the threshold established in the agreement between AT&T and BellSouth, and that AT&T will therefore incur additional liabilities for the special access services that AT&T purchased. (Transcript, page 37 ).

Having made the choice to enter into a volume and term commitment and having received the benefit of paying a reduced rate for the service, AT&T now desires to terminate the contract prior to meeting its volume and term commitments and asks this Commission to absolve it of having to pay any termination liability charges. Indeed, AT&T's witness Mr. Follensbee, unabashedly agreed that what he was asking the Commission to do was to "excuse" AT&T from its contractual obligation to pay the termination liabilities in question. (Transcript, page 38).

In accordance with its obligations under the 1996 Act as interpreted by the FCC, BellSouth agrees to convert qualified pre-existing tariffed services to UNE combinations at cost-based rates at AT&T's request. Neither the 1996 Act nor any FCC order, however, requires BellSouth to relinquish its contractual right to receive the benefit of its bargain with AT&T when AT&T, for whatever reason, terminates prematurely its volume and term agreement with BellSouth.

In fact, the FCC has found exactly the opposite to be true. In its Third Report and Order, *In re: In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, released November 5, 1999, the FCC specifically said:

We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.

*Id.* at n. 985.

Notwithstanding this clear statement of the law, AT&T makes two claims for why it should not be required to pay termination charges. First, AT&T claims that it is not actually canceling service from BellSouth, but rather is merely converting an existing tariffed service to network elements. (Follensbee

Prefiled Direct, page 23). The difficulty with this argument, of course, is that whether AT&T still uses the facilities to provide services is irrelevant. The agreement was that BellSouth would bill and AT&T would pay for these services at a certain level, and AT&T's conversion of some of these services to UNEs might drop the monthly billings below the level that would trigger the termination liabilities. The fact that AT&T may still be using the same facilities at a cheaper rate does not excuse AT&T from performing under its contract.

Second, AT&T claims that it purchased these services under contract because BellSouth was unwilling to provide combinations of network elements in lieu of these special access services. (Transcript, page 38). That fact, however, did not compel AT&T to enter into a term contract in which it sought price concessions in return for agreeing to certain termination liabilities if it did not meet its contractual obligations. This is akin to saying that AT&T had its "fingers crossed" when it entered into the contract, knowing that if it could get these facilities cheaper, it would attempt to do so without fulfilling its contractual obligations. That is simply not right. AT&T could have purchased these services on a month-to-month basis. It could have paid BellSouth a market-based rate to put the UNEs together for AT&T. It could have put the UNEs together itself. Any of those choices would have been perfectly acceptable. Instead, AT&T chose to enter into a long term contract evidently knowing that it intended to try to get out of or otherwise avoid paying for its obligations under the contract, if it could find a way to do so. The Commission should not sanction such conduct.

As previously stated, no federal or state statute, regulation or order permits AT&T to avoid paying termination liability charges that are otherwise owed under a volume and term contractual commitment with BellSouth. Indeed, to the contrary, the FCC has ruled that AT&T has to pay any termination liabilities that come due as a result of such conversions. The Commission should adopt BellSouth's position on this issue.

**Issue 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users? (Local Interconnection, Attachment 3)**

This issue requires a determination of whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection established by AT&T. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area, but must be routed out of that local calling area because of AT&T's network design.

This issue can be most graphically illustrated by reference to BellSouth Exhibit 2, which illustrated a hypothetical LATA containing 20 local calling areas. The exhibit reflects a single AT&T switch in the LATA, located in local calling area 20. The exhibit also shows a BellSouth tandem switch, a BellSouth local switch, a BellSouth customer and an AT&T customer located in local calling area 20.

AT&T agreed that for calls that originated and terminated in Local Calling Area (LCA) 20, the parties had no dispute implicated by Issue 7. (Transcript, page 44). That is, when a BellSouth subscriber in LCA 20 called an AT&T subscriber in LCA 20, BellSouth would carry the call to the Point of Interconnection (POI) marked on BellSouth Exhibit 2, at no charge to AT&T and would pay AT&T reciprocal compensation for transporting and terminating the call to AT&T's end user. *Id.*

BellSouth Exhibit 2 also shows a BellSouth subscriber and an AT&T subscriber located in LCA 1. However, while BellSouth has an end office switch in LCA 1, AT&T does not, choosing instead to serve its customer located in LCA 1 from AT&T's switch located in LCA 20. (Transcript, page 47). AT&T has decided to serve its customer in LCA 1 this way because it

is cheaper to provide transport throughout a LATA than to provide multiple switches in the LATA. *Id.* Although that may not hold true as AT&T's customer base evolves, it is the theory that underlies AT&T's current approach to the local telephone market.

On another note, this issue also does not involve calls that flow from AT&T's customer in LCA 1 to BellSouth's customer in LCA 1. AT&T has chosen to have a single switch in this example, and has chosen to incur the cost of providing dial tone to LCA 1 from LCA 20. Similarly, AT&T has chosen to pay BellSouth to transport the AT&T originated call from AT&T's POI in LCA 20 to BellSouth's customer in LCA 1. (Transcript, page 48).

The sole issue implicated by Issue 7 involves calls flowing the other way; that is, from BellSouth's subscriber in LCA 1 to AT&T's subscriber in LCA1. BellSouth didn't ask AT&T to put a single switch in an area that can be hundreds of miles from the originating point of the call. AT&T made that choice, and now wants BellSouth to pay for it.

There is no question that whichever company hauls a call that a BellSouth subscriber in LCA 1 originates all the way to LCA 20 is going to incur costs. (Transcript, page 50). The issue is who will be financially responsible for carrying this call from LCA 1 to LCA 20. BellSouth's position is that AT&T's network design is cause of this cost and AT&T should be responsible to pay the cost.

AT&T contends that adopting BellSouth's proposal would force AT&T to build facilities to every BellSouth local calling area. (Follensbee Prefiled Direct, pages 31-32). That is absolutely inaccurate. BellSouth acknowledges that AT&T can establish a physical point of interconnection with BellSouth at any technically feasible point and if it chooses to have only a single such point in a LATA, that is AT&T's choice. AT&T can, however, lease facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling

area in which its Point of Interconnection is found. When AT&T leases facilities from BellSouth, the leased facilities are not a part of AT&T's network and the Point of Interconnection is found at the point where AT&T's owned facilities end and the leased facilities begin. Nothing in BellSouth's proposed solution to this issue would require AT&T to build another (or the first) foot of cable devoted to local service in Kentucky beyond that required to establish a single point of interconnection in the LATAs that AT&T chooses to serve.

AT&T admits that BellSouth incurs a cost for transporting local traffic outside of the local calling area in which it originates and terminates to AT&T's Point of Interconnection in a distant local calling area. (Transcript, page 50). AT&T contends that BellSouth must recover this cost from either BellSouth's shareholders or end users, rather than from AT&T, the cost causer. If BellSouth is required to carry local traffic outside of the local calling area in which it originates and terminates to some distant Point of Interconnection established by AT&T, then AT&T should compensate BellSouth for its efforts. Otherwise, BellSouth has no source of revenue to cover the cost of transporting such local traffic. Although AT&T may have the flexibility to establish rate structures to ensure that it recovers these costs, BellSouth has no such luxury due to its established tariffed rates. Neither BellSouth's basic local exchange rates nor any inter-carrier compensation mechanism would compensate BellSouth for these costs.

Thus, when viewing the equities of the situation, it is clear that BellSouth's position that AT&T should be financially responsible for these costs that it has caused is the appropriate position. If AT&T prevails on this issue, then AT&T will have succeeded in requiring BellSouth to subsidize AT&T's entry into the local exchange market in Kentucky. AT&T has caused these facilities to be needed and this cost to be incurred and should therefore pay for the facilities.

It would be convenient to point to a statute or to an FCC order or rule that neatly resolves this issue, but no such statute, order or rule exists. Both parties agree that, as a matter of law, AT&T is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that point. MCI, in a proceeding at the FCC, however, asked the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. *See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, August 8, 1996 (*Local Interconnection Order*.) ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. Therefore, this Commission is essentially left to resolve this matter based on the evidence presented and the Commission's own sense of equity and fair play.

In its First Report and Order in Docket No. 96-98, the FCC did state that the CLEC must bear the additional costs caused by a CLEC's chosen form of interconnection. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection, including a reasonable profit.*" Further, at paragraph 209, the FCC states:

Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must *usually compensate incumbent LECs for the additional costs incurred by providing interconnection*, competitors have an incentive to make economically efficient decisions about where to interconnect.

(Emphasis added.) Thus, the FCC expects AT&T to pay the additional costs that it causes BellSouth to incur in interconnecting their respective networks.

This interconnection issue has been addressed in a similar fashion by at least two federal courts exercising appellate review over state commission arbitration decisions: *US West v. AT&T Communications*, 31 F. Supp. 2d 839 (D. Or. 1998), reversed in part, vacated in part sub. nom. *US West v. AT&T*, 224 F.3<sup>rd</sup> 1049 (9<sup>th</sup> Cir. 2000)<sup>8</sup>; and *US West v. Jennings*, 46 F. Supp. 2d 1004 (D. Az. 1999). In *US West v. AT&T*, the federal court stated that “[t]echnical feasibility answers the question of *whether* a CLEC may interconnect at a given point, but it does not answer the question of *how many* points of interconnection a CLEC must have.” *US West v. AT&T*, 31 F. Supp. 2d at 852 (emphasis in original). Although the court rejected US West’s claim that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service, the court did rule that “the mechanics of a particular interconnection arrangement are best determined by each state’s PUC, ... subject of course to the standards established by the Act and any FCC regulations (where appropriate).” *Id.*

Similarly, the federal court in *US West v. Jennings* found that “whether to require more than one point of interconnection is best determined by each state’s public utilities commission, ... subject of course to the standards established by the Act and any applicable FCC regulations.” *US West v. Jennings*, 46 F. Supp. 2d at 1021. The court further reasoned:

In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another. As an alternative, the [Arizona Commission] may require a CLEC to compensate US West for costs resulting from an inefficient interconnection.

*Id.* The court concluded its discussion of this issue by noting that “[i]t would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted

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<sup>8</sup> The district court’s decision regarding the point of interconnection issue was not raised on appeal and, therefore, was not disturbed by the Ninth Circuit’s decision.

to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants. *Id.* at 1022.

The above quoted FCC and federal court decisions provide the following guidance to this Commission for resolving Issue 7: (1) the 1996 Act does not define the minimum number of interconnection points that a CLEC must establish in a given LATA; (2) the decision regarding how many points of interconnection a CLEC must establish is best determined by the state commission; (3) in determining how many points of interconnection a CLEC must establish, a state commission may consider “relevant factors, including whether a CLEC is purposefully structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage;” and (4) as an alternative to requiring a CLEC to establish additional interconnection points, a state commission may require a CLEC to compensate the incumbent for costs resulting from an inefficient interconnection.

Further, the South Carolina Public Service Commission (“SCPSC”) recently required AT&T to bear the cost incurred by BellSouth to carry BellSouth’s local traffic that originates and terminates within a local calling area to AT&T’s distant point of interconnection. On January 30, 2001, the SCPSC issued Order No. 2001-079 in Docket No. 2000-527-C, *IN RE: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc.* Pursuant to 47 U.S.C. Section 252. In response to this issue, the SCPSC ruled:

In resolving this issue, the Commission concludes that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant calling areas to that single POI. That is the fair and equitable result.

Similarly, the North Carolina Utilities Commission has issued its Recommended Arbitration Order<sup>9</sup> in the AT&T/BellSouth arbitration conducted in North Carolina last year. That arbitration contained many of the same issues as the present arbitration, including Issue 7. In its decision in Docket Numbers P-140, Sub 73 and Docket No.)-646, Sub 7, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc. Pursuant to the Telecommunications Act of 1996*, issued March 9, 2001, the North Carolina Utilities Commission said:

The Commission concludes that, if AT&T interconnects at points within the LATA but outside of BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area.

Attempting to justify its position regarding this issue, AT&T relies heavily upon 47 C.F.R. § 51.703(b), which provides: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." (Follensbee Prefiled Direct, page 43). Mr. Follensbee further states that the FCC has issued a decision that confirms AT&T's interpretation of the federal regulations, citing *In Re: TSR Wireless, LLC, et al. v. U.S. West*, file Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000). (Transcript, page 45).

In the *TSR Wireless* case, the FCC considered a complaint brought by several paging companies against U.S. West for improperly charging paging carriers for delivery of LEC-originated traffic. In resolving this dispute, the FCC interpreted the provisions of the 1996 Act

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<sup>9</sup> Pursuant to the procedures followed by the North Carolina Utilities Commission, the Commission heard the arbitration, received briefs and proposed orders from the parties, and then issued its Recommended Arbitration Order. The parties are then allowed to comment on that recommended order, and the Commission thereafter issues its final order.

and the FCC rules promulgated thereunder. Specifically, 47 C.F.R. 51:701(b) defines “local telecommunications traffic” for purposes of wireless and wire line providers as follows:

- (b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:
  - (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or
  - (2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area ....

Thus, section 51.701(b)(1) defines “local telecommunications traffic” for purposes of wire line traffic, while subsection (2) defines “local telecommunications traffic” for purposes of CMRS providers. CMRS means Commercial Mobile Radio Service, and CMRS carriers include providers of one-way paging and other wireless services. (See *TSR Wireless*, ¶2) A “Major Trading Area” (MTA”) represents the local calling area for CMRS providers and is analogous to the local service area of wireline service providers such as BellSouth. (Transcript, page 55).

On cross-examination regarding the *TSR Wireless* decision, Mr. Follensbee agreed that the FCC directed local exchange carriers such as BellSouth to deliver traffic at no charge within the MTA or local service area. (Transcript, page 56). That is, Mr. Follensbee agreed that what the *TSR Wireless* decision stands for is that a local exchange carrier has an obligation to deliver at no charge calls within the MTA. Indeed, Paragraph 31 of the *TSR Wireless* decision provides: “Section 51.701(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers *anywhere within the MTA in which the call originated*, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries.” (Emphasis added.)

Finally, there is the issue of the recent FCC order related to SBC's request for interLATA relief under Section 271 of the 1996 Act. As AT&T clearly admitted, the issue of whether an ILEC could charge a CLEC for delivering local traffic to a distant point outside the local calling area in which the call originated was squarely before the FCC. (Transcript, page 50). Since the issue was squarely before them, the FCC could have resolved this entire issue with a single sentence, requiring ILECs to deliver, at no charge all local calls originating anywhere in a LATA to an CLEC single point of interconnection in that LATA. However, that sentence does not appear in the SBC Kansas/Oklahoma order, and AT&T instead was reduced to once again "interpreting" the FCC's order on this point. (Transcript, page 53). The simple point is that if the FCC shared AT&T's feelings on this point, the FCC has had more than ample opportunity to state that plainly and clearly. It has not done so because presumably even the FCC perceives the unfairness of requiring BellSouth or any ILEC to haul a local call hundreds of miles across a LATA simply because AT&T finds it cheaper to have a single switch in the LATA and to use long lines to serve its customers. Indeed, if it can get BellSouth to pay for half of its transport, it will probably always be cheaper to design AT&T's network in that fashion.

The only reasonable conclusion that can be reached is that BellSouth's obligation to deliver traffic to AT&T's Point of Interconnection at no additional charge has to be limited to calls that not only originate and terminate within the same local service area, but that do not leave that local service area in the first instance.<sup>10</sup> Clearly that is the proposition that *TSR*

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<sup>10</sup> BellSouth acknowledges that in the Level 3 Arbitration the Commission found that "Level 3 has the right to establish a minimum of one POI per LATA," but it also recognized the potential for abuse in this arrangement and required Level 3 to establish another POI when access tandem traffic reaches the OC-3 level (about 26 million minutes per month). (Case No. 2000-404, Order, March 14, 2001, p. 3). Subsequently, the parties reached a regional agreement on this issue permitting the parties to mutually agree on a POI, and if they could not, permitting each to establish a POI of their choice. Additional POIs may be established by mutual agreement, and absent agreement, a new POI will be established when the local traffic between BellSouth and Level 3 exceeds 8.9 million minutes (DS-3 equivalent) per month for three consecutive months during the busy hour. The agreement was filed with the Commission on April 2, 2001, and is pending subject to the Commission's public interest review.

*Wireless* stands for. In resolving Issue 7, the Commission should conclude that while AT&T can have a single Point of Interconnection (or two) in a LATA if it chooses, AT&T remains financially responsible for the facilities necessary to carry calls that originate and terminate in a local calling area to that distant Point of Interconnection. That is the only fair and equitable result.

**ISSUE 9: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch? (Local Interconnection, Attachment 3, Section 1.3)**

This issue is also driven in large part by the network design AT&T has chosen to utilize, as described in the discussion of Issue 7 above. BellSouth's local network generally consists of local tandems, end office switches and interoffice transport. However, AT&T's local network generally consists of a few switches and long loops connecting the switch to AT&T's subscribers. When BellSouth routes a call from a CLEC through one of its tandems, BellSouth completes the call by first switching the call at the tandem, transporting the call to the appropriate local end office and finally switching the call to the intended recipient of the call. (Transcript, page 65). BellSouth then charges the originating CLEC reciprocal compensation based on the appropriate tandem switching rate, transport rate and local switching rate, since all of these parts of BellSouth's network were used in transporting and terminating the call. *Id.*

On the other hand, when BellSouth hands off one of its calls to AT&T, AT&T carries the call back to its end office switch, where the call is switched once and then placed on the appropriate loop to reach the intended recipient of the call. That is, because of AT&T's network design, the call is only switched once and there are no interoffice transport facilities involved. (Transcript, page 66).

Nevertheless, and in spite of the fact that only one switch is involved, AT&T wants BellSouth to pay reciprocal compensation to AT&T for calls placed from BellSouth's local subscribers to AT&T's local subscribers at a rate equal to the total of the tandem switching rate and the end office switching rate for every such call AT&T handles. *Id.* BellSouth objects, for obvious reasons, and that frames the dispute raised by Issue 9.

AT&T's position is based on its reading of the language of a portion of FCC Rule 47 C.F.R. §51.711 (a)(3), which provides “[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.” (Follensbee Prefiled Direct, page 51).

BellSouth's position is that the determination of whether AT&T is entitled to the tandem switching rate plus the end office switching rate is a factual one determined by a two-pronged test. (Ruscilli Prefiled Direct, pages 38-39). The first prong is as AT&T states it and involves the geographic coverage of the switch. The second prong, however, requires an examination of whether the switch actually performs tandem switching functions with regard to local traffic. BellSouth's position that the switch must function as a tandem switch is based both on the FCC's Local Interconnection Order, which addressed this matter, and on an earlier section of the same rule that AT&T relies on to support its position. Specifically, Section (a)(1) of Rule 51.711 provides:

For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services. (Emphasis Added)

Further, in its Local Competition Order, at Paragraph 1090 where it discussed this subject, the FCC directed state commissions to “consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC’s tandem switch and thus whether some or all calls terminating on the new entrant’s network should be priced the same as the sum of transport and termination via the incumbent LEC’s tandem switch.” (Emphasis added.) That is, the FCC included, in addition to the issue of geographic coverage, a requirement that the switch in question perform functions similar to that of a tandem switch in order to entitle the CLEC to reimbursement at a rate that normally would involve two or more switches, not one.

Therefore, in order to resolve this issue, the Commission must first determine which test should apply, and then review the facts presented to see if either test is met. BellSouth asserts that the two-pronged test must apply, but that in either event, AT&T has not demonstrated that it meets either the geographic coverage test or the functionality test.

AT&T’s argument that the test is only a single-pronged one rests solely on the fact that the FCC’s rule touching on this issue, 47 C.F.R. § 51.711 (a)(3), only mentioned the matter of similar geographic coverage. If the rule of statutory construction that AT&T wishes this Commission to adopt is that only the literal language of an FCC rule applies, AT&T might have a point. BellSouth, however, doubts that AT&T really would adopt such a position, and it is clear that the courts that have addressed this issue have not taken such a position.

Specifically, in *MCI Telecommunications Corp. v. Illinois Bell Telephone*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill, June 22, 1999), the district court, in addressing this very issue, noted:

In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI’s single switch in Bensonville,

Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.

In the accompanying footnote, the court stated:

MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test. (citation omitted) MCI admits that the ICC used this test....Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test...But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.

Similarly, the Ninth Circuit Court of Appeals viewed the rule in the same way in *U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9<sup>th</sup> Cir. 1999), finding that:

The Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch.

Clearly BellSouth's view of the applicable test is the correct one. It would simply make no sense to compensate AT&T for functions that AT&T's switches do not perform; yet that is exactly what AT&T would have this Commission do.

Turning to the application of the two-pronged test, the first question is whether AT&T's single switch performs functions similar to BellSouth's tandem switches. It is clear that it does not. The FCC's rule defines "local tandem switching capability" as including "trunk connect facilities," the basic switch trunk function of connecting trunks to trunks and the functions that are centralized in tandem switches, including but not limited to call recording, routing of calls to operator services and signaling conversion features. 47 C.F.R. § 51.319 (c) (3). As BellSouth witness Ruscilli testified, this means that AT&T's switches must connect trunks terminated in one end office switch to trunks terminated in another end office switch. (Ruscilli Prefiled Direct,

page 43). Since AT&T's switches in Kentucky do not connect in such a manner, they cannot be found to perform tandem switch functions.

It is equally clear that AT&T should not be entitled to the sum of the tandem switching rate and the end office switching rate for every call it handles based on the second prong of the test, comparable geographic coverage. AT&T's claim here is fairly simple: Since it can use long loops to reach every corner of Kentucky if it chooses to do so, it obviously has comparable geographic coverage to that of BellSouth's tandem switches. (Transcript, page 81).

BellSouth's position, logically, is that in order to qualify for the tandem switching rate, AT&T's switches must actually be serving the same comparable geographic area as do BellSouth's tandem switches. (Ruscilli Prefiled Rebuttal, page 34). It is not sufficient that the switch simply be capable of serving customers in that geographic area through the use of long loops, should AT&T choose to serve such customers. *Id.* Yet that is exactly what AT&T's claim rests upon.

The adoption of AT&T's position regarding its universal entitlement to the tandem switching rate, without regard to the facts, would lead to nonsensical results. For instance, AT&T agreed that one of its switches could be connected directly to a BellSouth end office. (Transcript, pages 68-70). In such circumstances, a call that originated from an AT&T end user in a local calling area and terminated to a BellSouth end user served by that BellSouth end office would result in AT&T paying reciprocal compensation only at the end office switching rate. On the other hand, if that same BellSouth end user placed a call to that same AT&T end user, AT&T would claim that it was entitled to reciprocal compensation at the tandem switching rate (again, the sum of the end office switching rate and the tandem switching rate). *Id.* The exact same end users are involved in both calls, the same end office switches are used in both calls, yet using

AT&T's theory results in one call generating reciprocal compensation at the end office switching rate, while the other generates reciprocal compensation at the higher tandem switching rate. A theory, such as AT&T's, that leads to such a conclusion, simply cannot be right.

Again, BellSouth recognizes that this Commission has addressed this issue in the ICG/BellSouth arbitration and ordered that ICG should be compensated at the tandem interconnection rate. (ICG Order dated March 2, 2000). However, the resolution of this issue should turn on a carrier-by-carrier analysis of the facts. (Ruscilli Prefiled Direct, page 44). In this case AT&T has a single "local" switch located in Kentucky as does TCG and both switches are located in Louisville. (Transcript, pages 77-78). AT&T claims to also be serving portions of Kentucky from switches located in Indianapolis, Indiana, Cincinnati, Ohio and Bloomington, Indiana. (Transcript, pages 77-79). More specifically, AT&T claims that switches that are located hundreds of miles from Kentucky are the "local" switches that are "capable" of serving any point in Kentucky. *Id.* Even if AT&T is correct and the only test that needs to be applied is one of geographical coverage, the FCC could not have meant to suggest that this scenario, where AT&T claims to be serving residents of Kentucky with switches located hundreds of miles away, is what the FCC had in mind when it adopted Rule 51.711(a)(3).

BellSouth does not dispute AT&T's right to compensation at the tandem rate where the facts support such a conclusion. However, in this proceeding, AT&T is seeking a decision that allows it to be compensated for the cost of equipment it does not own and for functionality it does not provide. Absent real evidence that AT&T's switches actually serve a geographic area comparable to BellSouth's tandems, and absent evidence that AT&T's switches actually perform tandem switching functions for local traffic, BellSouth requests that this Commission determine that AT&T is only entitled, where it provides local switching, to the end office switching rate.

**ISSUE 13: What is the appropriate treatment of outbound voice calls over Internet Protocol (“IP”) telephony, as it pertains to reciprocal compensation? (Local Interconnection, Attachment 3, Section 6.1.9)**

Internet Protocol Telephony refers to, in the context of this proceeding, a telephone-to-telephone telecommunications service that uses a digital packet switched network to complete the call. (Ruscilli Prefiled Direct, pages 46-47). This is to be contrasted with the more traditional method of carrying such calls, which is by using an analog circuit. (*Id.* at 48).

This issue deals, by its terms, with outbound calls that use IP telephony. The question is whether such calls, when they originate in one local calling area and terminate in a distant local calling area, are to be treated like local calls, or whether they are to be treated like the long distance calls that they are. BellSouth’s position is that application of access charges for long distance calls does not depend on the technology used to transport such calls. *Id.*

AT&T, on the other hand, is trying to shoehorn itself into the same ISP exemption that CLECs are presently using to claim that calls to Internet Service Providers are exempt from access charges, which of course is the argument that has also lead to the question of whether calls to ISPs are local or interstate calls. *Id.* If it can convince this Commission that a call from Louisville to Washington, D.C. is really a local call because the underlying AT&T network uses packet switching rather than circuit switching, it will be able to avoid paying access charges and in a proper case, might even be able to argue that BellSouth would owe AT&T reciprocal compensation for handling such a call, just as AT&T contends now for calls that are headed to an ISP.

The answer to this issue has to be that the choice of transmission medium does not transform a long distance call into a local call. Indeed, the FCC itself has said that “phone-to-phone” telephony services lack the characteristics that would render them “information services”

within the meaning of the law. (*Id.* at 49). As a result, BellSouth respectfully requests that the Commission find that the nature of phone-to-phone calls are determined by their beginning and ending points and not by the transmission medium that is used to haul the calls.

**ISSUE 16: Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T? (Collocation, Attachment 4, Section 11.1, 11.2, 11.4, 11.5)**

This issue has actually turned out to be quite a strange one. For months BellSouth thought that the dispute revolved around BellSouth's insistence that AT&T do a criminal background check on its employees that wanted to enter BellSouth's premises and AT&T's refusal to conduct such an investigation. However, it turns out that AT&T has in fact been conducting criminal background checks on its employees hired since April, 1999, and the dispute between the parties is how far back such checks should be conducted. (Transcript, pages 109-110).

It is undisputed that BellSouth conducts criminal background checks on its own employees and requires its vendors to do the same. (Transcript, pages 111-112). Even though it has had such a requirement for years, to settle this issue with AT&T, BellSouth agreed that the requirement would only apply to AT&T employees hired after January 1, 1995. (Transcript, page 110). In essence, BellSouth was willing to assume that if an AT&T employee had been on AT&T's payroll since the beginning of 1995 that this provided sufficient assurance, notwithstanding that BellSouth requires more of its own employees and vendors.

BellSouth believed that AT&T did not conduct such checks, and that this issue addressed that specific concern. Indeed, the AT&T witness testified that he did not learn that AT&T was doing background checks until around November, 2000, although the parties have been litigating this issue since at least the summer of 2000. (Transcript, pages 112-114).

One matter is perfectly clear. Both AT&T and BellSouth evidently now agree that the criminal background check is important, since they both do it. That can no longer be an issue. The question is whether AT&T should be allowed to do less than what BellSouth requires of itself and its vendors. In this regard, AT&T offered absolutely no justification for its position. That is, it obviously agrees that such background checks are important, since it does them, but it offers no reason why an employee hired in March 1999 is trustworthy and thus does not require a background check, but an employee hired in April 1999 is not. Obviously AT&T could raise the same issue regarding BellSouth's January 1, 1995 date, but that was offered as a compromise, since BellSouth has done such checks on its employees and vendors for much longer than that.

AT&T's position seems to be that money can fix any problems that its employees may cause. That seems a bit cavalier when a simple criminal background check could prevent or at least eliminate some of the opportunities for such damage to occur in the first place, but that is belied by the fact that AT&T is now doing these criminal background checks itself. AT&T simply offered no viable reason why such checks should not be required. Indeed, should AT&T ever actually get in the business of providing local residential service, it is difficult to understand how it could allow its employees into subscribers' homes without such a check. Such a check should be required before they are allowed into BellSouth's premises as well.

**ISSUE 18: Has BellSouth provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing Operator Services/Directory Assistance ("OS/DA") as a UNE?**

The FCC has determined that where an Incumbent Local Exchange Carrier (ILEC) has provided CLECs with customized routing or a compatible signaling protocol, that the ILEC is not required to provide unbundled access to operator services and directory assistance. (Milner Prefiled Direct, page 8). Customized routing, as it is used here, means that the CLEC's

customers served by a BellSouth switch can reach the CLEC's choice of operator service or directory assistance service platforms instead of BellSouth's operator service or directory assistance service platforms. *Id.*

BellSouth currently provides two means of customized routing, the Line Class Code (LCC) method and the Advanced Intelligent Network (AIN) solution. The LCC method makes use of translations and routing capabilities in the end office switch while the AIN solution makes use of BellSouth's AIN platform. (*Id.* at 9-10). Despite AT&T's assertions to the contrary, both methods are available today and both have been tested and proven workable. (*Id.* at 11-12).

AT&T's chief complaints about the AIN solution to customized routing seems to involve its allegations that the AIN solution creates post-dialing delays of up to 1 to 2 seconds (Bradbury Prefiled Direct, page 41) and that the solution is inefficient because it takes switch-based functions and performs them in on-line databases. (*Id.* at 42). While it ought to be open to question as to whether a one-second or even a two-second delay would be ascertainable by a caller, all switching systems take some time to translate the dialed digits, select an appropriate trunk group and the like and all of these functions contribute to post-dialing delay. (Milner Prefiled Direct, page 13). If a delay of one-second, or even two-seconds is unacceptable to AT&T, it of course can simply elect to use the LCC method, which is also available and accomplishes the same result. *Id.*

AT&T may not be happy about the situation, but it acknowledged that BellSouth has testified that these customized routing options are available (Transcript, page 133) and that the last time that AT&T tried to use customized routing via AIN was in 1997. (Transcript, page 134). AT&T also stated that it was not interested in the AIN solution at this time. (Transcript, page 135). At bottom, AT&T may not like the way the proffered customized routing work, but it

is available and BellSouth is therefore not obligated to offer Operator Services or Directory Assistance as a UNE in Kentucky.

**ISSUE 19: What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning? (Attachment 7, Sections 3.20 – 3.24)**

This issue actually consists of two separate issues that need to be addressed individually. One issue is what is known as the “footprint” issue, which has to do with programming BellSouth’s offices to recognize different Operator Services/Directory Assistance (OS/DA) routings. The other issue involves how the various OS/DA options may be ordered once they are programmed into BellSouth’s switches. (Transcript, page 137).

The parties have resolved the “footprint” portion of this issue. Essentially this entire issue involves the various options that AT&T can have to route OS/DA traffic. Generally there is the current default routing, which takes the calls to a BellSouth branded operator platform. The second option is to carry the calls to a BellSouth unbranded platform. The third option is to carry the calls to a BellSouth platform, but with AT&T branding and the fourth and final option is to carry the call to an AT&T or third party platform. (Transcript, pages 129-130). BellSouth is perfectly willing to make any of these options available to AT&T, but in order to work, each option has to be pre-programmed into the appropriate central offices. AT&T understands that it has to tell BellSouth which offices to pre-program and understands that BellSouth will do the programming, provided AT&T pays for the programming, which AT&T is willing to do. (Transcript, pages 138-139). Indeed, the dispute with the “footprint” portion of this issue involved the determination of the documentation that is necessary to describe what AT&T has to tell BellSouth in order for BellSouth to know which offices to program and how to program

those offices. *Id.* That has all now been resolved and nothing further is required from the Hearing Officer.

The second part of the issue is not likely to be resolved by the parties. Essentially, the second part of the issue involves what happens after AT&T has identified the offices in which it wants to offer OS/DA alternatives, and after BellSouth has programmed those offices. Once that has happened, a properly submitted order, with the requisite information on it, should result in an individual subscriber's calls being routed to the platform selected for it by AT&T. AT&T wants the ability to simply select, by putting a number or a letter on its orders, the option it wants for that customer.

The problem is that there is no industry standard governing how this would be accomplished. (Pate Prefiled Direct, page 16). Essentially, each alternative OS/DA routing in each individual central office will require the use of specific LCCs that tell BellSouth's computers how to route the call for the specific end user. These LCCs are basically instructions that tell the computers how and to what trunks the subscriber's traffic is to be routed. (Transcript, pages 135-136).

On one level, this is not a problem. The FCC has clearly told BellSouth what it is required to do. In paragraph 224 of its Louisiana II order the FCC said:

“We agree with BellSouth, that a competitive LEC must tell BellSouth how to route its customers' calls. If a competitive LEC wants all of its customer calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for itself. If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.”

[Emphasis added]

BellSouth has no problem with the FCC's position, provided a single routing instruction is given as the default. Indeed, this entire issue is about parity. (Transcript, pages 144-145). BellSouth

has a single default for all of its OS/DA traffic region-wide. BellSouth's customers OS/DA calls default to a BellSouth-branded platform. It is appropriate for BellSouth to provide a similar "default" routing for AT&T and BellSouth is willing to do so. If AT&T will designate a single "default" option, BellSouth will program its computers so that AT&T need do nothing else other than submit the customer's order.

The difficulty is that AT&T doesn't want parity with BellSouth, it wants something special. It wants to be able to vary its choices from central office to central office. (Transcript, page 125). BellSouth doesn't have a problem with AT&T doing so, but BellSouth's computers will not handle such options automatically. AT&T can select the single option and BellSouth will handle the calls without anything further. If AT&T wants to vary the routing for a specific customer, AT&T can give BellSouth, on the order form, the correct LCCs for the routing selected, and BellSouth can provide that routing. (Transcript, page 147). AT&T complains that its service representatives will have to look up the proper LCCs in such instances, but again, BellSouth is ready to provide the "default" option if AT&T elects to have one. If AT&T doesn't want such a default, some one is going to have to look up the proper LCCs, and since it is AT&T's choice to use options other than a default, it is appropriate that AT&T provide the LCCs.

BellSouth has offered parity to AT&T with regard to this issue. AT&T doesn't want parity, it wants something different. BellSouth has no objection to AT&T having something different, but AT&T is going to have to bear the burden of facilitating those options, absent some national industry standard that BellSouth can use to accomplish the desired result.

**ISSUE 22: Should the Change Control Process be sufficiently comprehensive to ensure that there are processes to handle, at a minimum the following situations: (OSS, Attachment 7, Exhibit A)**

- a) introduction of new electronic interfaces?**
- b) retirement of existing interfaces?**
- c) exceptions to the process?**
- d) documentation, including training?**

- e) defect correction?**
- f) emergency changes (defect correction)?**
- g) an eight step cycle, repeated monthly?**
- h) a firm schedule for notifications associated with changes initiated by BellSouth?**
- i) a process for dispute resolution, including referral to state utility commissions or courts?**
- j) a process for the escalation of changes in process?**

CLECs are entitled to have access to the operational support systems (OSS) utilized by BellSouth to provide service to its customers. To facilitate this access, BellSouth, together with the CLECs, has developed interfaces that allow the CLECs to communicate with BellSouth's OSS. (Pate Direct Testimony, page 20). Changes in these interfaces are significant, and affect both BellSouth and the CLECs. Therefore, there has to be an orderly process for changes in these interfaces.

In this regard, there is a document that exists that embodies the change control process, and varying versions of the document were introduced in this proceeding as exhibits. (*See e.g.* Pate Prefiled Rebuttal Testimony, Exhibit 36). The document is constantly undergoing revision, which is illustrated by the fact that at the time AT&T filed its direct testimony in North Carolina last summer, the then-current version of the document was Version 1.4. (Transcript, pages 157-158). The current version at the time AT&T filed its rebuttal testimony was Version 2.0. Since the hearing in Kentucky concluded, there have been Versions 2.1, 2.1a and the current version that is being used by BellSouth and the CLECs is Version 2.2. The document itself is clearly evolutionary, and with that in mind, BellSouth will make some general remarks about the change control process itself, before addressing the specific issues that AT&T has raised in its Petition.

BellSouth began developing processes for keeping CLECs informed and involved in changes to BellSouth's systems quite some time ago. The first process was the Electronic Interface Change Control Process. (Pate Prefiled Direct, page 23). Subsequently, after receiving

input and information from the CLECs, BellSouth introduced a second change control process, the Interim Change Control Process (ICCP). (*Id.* at page 28). These evolving versions resulted from meetings and conferences involving BellSouth and the CLECs that were interested in participating. (*Id.* at 26-27). Since the BellSouth's OSSs are regional in nature, the CCP is regional as well, and so CLECs from across the region are involved in the development of this process. *Id.*

AT&T was a participant in those proceedings, but was evidently unhappy with the resolution of some of its specific issues with the CCP. Consequently, AT&T raised a number of individual issues in this arbitration, as well as in its arbitrations with BellSouth in five other states, regarding the change control process. These issues range from the inclusion in the CCP of a dispute resolution process to the scope of the exclusions from the process. AT&T is simply shopping from state commission to state commission, hoping to convince one of the commissions in the BellSouth region to mire itself in the minutiae that AT&T keeps complaining about with regard to the CCP.

There are over 100 registered participants in the Change Control Process. (Transcript, page 156). At least fourteen or fifteen CLECs regularly participate in meetings to discuss issues in the Change Control Process. (*Id.* at 156). AT&T admits that it does not speak for all the participants in this process. (*Id.* at 156). Nevertheless, the Change Control Process offers a forum to reach consensus regarding outstanding issues. In fact, BellSouth counsel provided AT&T witness, Mr. Bradbury, a voting ballot sheet listing open issues. (Transcript, page 164). Mr. Bradbury confirmed that the ballot sheet showed there were 34 outstanding issues at the time and consensus was reached on 27. (*Id.* at 164-165).

The CCP also has a provision that permits CLECs to escalate issues within BellSouth where consensus is not reached. (Transcript, page 169-170). In addition, if CLEC participants are not satisfied with the results of their appeal within BellSouth, the CCP provides an additional remedy of taking the dispute to an appropriate state regulatory authority. (*Id.* at 170). Regarding the unresolved issues that AT&T is now attempting to arbitrate, AT&T admitted that neither AT&T nor any CLEC had escalated those issues within BellSouth as called for in the CCP. (*Id.* at 170-171).

Therefore, BellSouth makes the same request of this Commission as it has with the other commissions. BellSouth requests that the Commission not compel the resolution of any of AT&T's specific complaints in this proceeding. (*Id.* at 24). Instead, BellSouth requests that if the Commission wants to address the matter of the change control process at all, that it simply provide guidance as opposed to direction for the disputes that BellSouth and AT&T have. This is the result that is reflected in the North Carolina Utilities Commission Recommended Arbitration order, was the basis of the Georgia Public Service Commission order that has been verbally adopted, but not reduced to writing yet, and is the practical effect of the decisions that either have been issued, or will be issued in South Carolina, Louisiana and Mississippi, where the issue wasn't even raised.

The most compelling basis for BellSouth's position on this issue is that BellSouth's OSS with which the CLECs interface are regional in nature. It follows that the change control process to address those interfaces has to be regional as well. (Transcript, page 156). If BellSouth or any other local exchange company were forced to deal with up to nine different change control processes for the same interfaces and the same OSS, it would quickly become unmanageable. (*Id.* at 24). For instance, one of the issues raised by AT&T is the time in which certain steps

should be taken to determine whether a defect exists in a particular interface. If BellSouth were given nine different times within which it had to respond, the difficulty in complying would be obvious.

Moreover, not only is the change control process regional in the sense that it applies to interfaces that are regional, it also applies to all CLECs that choose to participate, not just AT&T. (*Id.* at 30-31). However, AT&T is the only CLEC that is a party to the present arbitration. It is patently unfair to allow AT&T, because it has an arbitration underway, to dispute and arbitrate the terms of the change control process that, when implemented, will affect 100+ other CLECs that are participating in the CCP but are not parties to this arbitration. AT&T was forced to admit that not all of the CLECs that participated in the CCP agreed with AT&T in every instance. (Transcript, pages 156-157). Simple fairness dictates that the process that affects all of these CLECs cannot be arbitrated in a case involving only one of those CLECs.

Finally, the CCP is an evolving process and if the Commission were to take the matter up, it would never be able to put it down. For instance, Issue 22 lists 10 separate sub-issues, (a) through (j), that AT&T raised in its petition and asked this Commission to resolve. By the time the testimony was filed, AT&T had added issues (k) through (o). At the time of the hearing, sub-issues (b), (c), (d) and (f) had been resolved by the parties, and portions of sub-issues (e) and (g) have been resolved. (Transcript, page 162). In addition, since the hearings in Kentucky, sub-issue (j) has been settled, and sub-issue (k), one of the additional issues added by AT&T has also been settled. The point is that the process is currently working as it stands. To the extent that there is a problem raised that cannot be resolved through the CCP, the CCP has provisions that allow disputes to be escalated within BellSouth and, if the dispute between BellSouth and the CLECs (not just AT&T) cannot be resolved, there is a dispute resolution process that allows the

matter to be brought before a state commission. This Commission should conclude, based on the evidence presented, that the process is working, and should leave these disputes that AT&T has raised to be resolved within the CCP.

BellSouth will not attempt to address each unresolved individual sub-issues raised by AT&T in arbitration issue 30 in this brief as they are fully discussed in BellSouth witness Pate's Prefiled Rebuttal Testimony, pp. 27-42. Nevertheless, BellSouth will discuss several for the purpose of illustrating that these issues are best resolved in the CCP. During the discussion of these sub-issues, reference will be made to BellSouth Exhibit 36 attached to Pate Prefiled Rebuttal Testimony, which was the most recent version of the CCP at the time the testimony was filed.

#### **(e) Defect Correction**

##### **(g)An eight step cycle, repeated monthly**

As the CCP has evolved, the nature of the sub-issues that AT&T has raised have evolved as well. These two sub-issues are no longer what they appear. At one time, the definition of a "defect" was an issue that AT&T wanted the state commissions to resolve. That part of sub-issue (e) has been resolved between the parties, but now AT&T wants the Commission to address the time that should be allowed for BellSouth to address certain matters. (Transcript, page 162). For instance, AT&T wants to shorten the times that it takes to do certain things in the process. (Bradbury Prefiled Direct, pages 74-75). The difficulty with AT&T's position regarding the cycle times is that it presented no evidence upon which this Commission could make a meaningful change in the times allowed for certain steps to be taken to correct a defect or to process a change. Instead, as AT&T's witness said, there were no empirical studies, just the witnesses' "years" of experience and talking to his "IT" folks. (Transcript, page 175).

The point, of course, is that this is simply not an appropriate matter for this Commission to take up with the evidence it has in front of it. How can the Commission know whether a process takes 10 days, 20 days or 15 days? This is an issue that should be left to the CCP. Again, if BellSouth and the CLECs, as a group, cannot resolve the issue, and it actually makes a difference to someone other than AT&T, then there is a process to address it. That is the path that AT&T should follow.

**(h) A firm schedule for notifications associated with changes initiated by BellSouth**

AT&T and BellSouth have a disagreement about how far in advance documentation has to be released. (Pate Prefiled Rebuttal Testimony, page 36 and Transcript, Bradley Cross page 171). Any review of the existing CCP will demonstrate that there are a host of different dates, lead times and release windows discussed in the document. Essentially AT&T always wants more time.

The first question the Commission should ask is whether it can determine what the problem is that AT&T wants resolved. Mr. Bradbury stated that AT&T wanted 90 days advance notice for distribution of draft requirements and specifications. (Bradbury Prefiled Direct, page 75). BellSouth's witness Pate testified the proposed intervals in the newest version of the CCP document was 90 days for drafts and 45 days for final requirements. (Pate Prefiled Rebuttal, page 36). So, is there an issue or not? AT&T has not indicated that the issue is settled; however, based on its testimony, it is unclear what else AT&T wants? BellSouth suggests that this simply highlights, once again, that this is not the proper forum for resolution of these issues.

There is a second point, however, that is also important. Requiring additional advance notice for these types of releases presents several problems. First, as most people would acknowledge, changes in the computer and software industry do not occur at an even and

measured pace. AT&T's solution would in essence result in software changes being held for periods of time when the software could be out and being used, just so AT&T could have its lengthy notice. That simply penalizes other CLECs who are more adept, and quicker at implementing changes. Moreover, BellSouth maintains one prior version of the software that is being changed, so if AT&T is not ready to move forward, it can continue to use the prior version while other CLECs who are more adaptable can take advantage of improvements and additions to these interfaces.

BellSouth has made a number of changes in the time intervals for software releases (Pate Prefiled Direct, page 71), as the CCP has evolved. Again, this simply demonstrates that this entire process needs to be left with the CLECs and BellSouth. Should those parties be unable to reach a consensus, there is a process for escalating any disputes.

**(i) A process for dispute resolution, including referral to state utility commissions or courts.**

This too is a sub-issue that demonstrates the futility of having this Commission involve itself at this point in this process. The current version of the CCP, and indeed all versions, provide for escalation and dispute resolution. In RMP-36, attached to BellSouth witness Pate's rebuttal testimony, there is an escalation and dispute resolution process that begins on page 44 and continues through page 48. It is a detailed procedure, right down to the telephone numbers and e-mail addresses of the BellSouth employees who would be involved in an escalation. Referring to Mr. Bradbury's Exhibit JMB-13, AT&T's mark-up of Version 2.0 of the CCP, and looking at the comparable pages, 50 to 55, the differences that AT&T wants can be ascertained. The major dispute, once again, is the time that is allowed for the process to occur. For instance, at RMP-36, page 44, BellSouth proposes 2 days as the time frame within which BellSouth is to "turn around" a high impact issue that has been escalated as a result of the CCP. On page 50 of

Mr. Bradbury's exhibit JMB-13, AT&T proposes a 1 day "turn around" for both high and medium impact issues that have been escalated. However, AT&T provides not one bit of evidence to support its position, or to even demonstrate that the additional day in the process would adversely impact AT&T. How is the Commission supposed to resolve this disagreement? The simple truth is that it is impossible to do so. Again, the issue should be left to the CCP, and if the CLEC community as a group believes that BellSouth's turn around time is unreasonable, then there is a process for the CLEC group as a whole to bring the problem to a state commission, after that issue has been escalated within BellSouth. It may well be that no CLEC other than AT&T even cares about this issue or finds that BellSouth's proposed time frames are inappropriate. That is the kind of information that should be germane to this issue, yet AT&T has presented nothing to the Commission that would justify its position on this issue.

AT&T should be left to pursue its requested changes in the CCP to the CCP itself. If this Commission embarks on a course of resolving disputes such as these, it is a journey that will never end.

**ISSUE 23: What should be the resolution of the following OSS issues currently pending in the change control process but not yet provided? (OSS, Attachment 7, Exhibit A)**

- a) parsed customer service records for pre-ordering?**
- b) ability to submit orders electronically for all services and elements?**
- c) electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel?**

**(a) Parsing Customer Service Records.**

As a preliminary matter, BellSouth would note that this specific sub-issue, unlike sub-issues (b) and (c), is presently being considered in the CCP. Consistent with BellSouth's position regarding Issue 22, this matter should be referred to the CCP for final resolution.

Moving to the substance of the sub-issue, placing an order for a customer generally involves three steps. First, there is the pre-ordering phase, then the ordering phase and finally the provisioning phase. In the pre-ordering phase, AT&T checks to see what services are available in the area in which the potential customer is seeking service, and if the potential customer is currently a BellSouth end-user customer, AT&T obtains information about the customer from BellSouth. The information about the customer comes from BellSouth's existing customer service records. These records are transmitted electronically to AT&T in the same format that the records are used by BellSouth's retail operations. (Pate Prefiled Rebuttal, page 43). The information that is sent, while in a data stream, includes unique section identifiers and delimiters that allow BellSouth's retail operations to populate the necessary fields when a customer is attempting to order new service. (*Id.* at 85-86).

AT&T's position, and its change request, is premised upon AT&T's claim that the data stream is not "parsed" or broken down in the way that AT&T wants it. That is, the section identifiers and delimiters that are present in the data stream do not provide the breakdown that AT&T desires.

This is another issue that AT&T is carrying around the BellSouth region and around the country, trying to find a commission that will order the ILECs to do parsing on the ILEC's side of the interfaces. AT&T tried this at the FCC, and the FCC specifically rejected AT&T's argument. (Transcript, page 191). Nevertheless, as Mr. Pate has testified, BellSouth has a team working on the issue of parsing, as AT&T wants it (Pate Prefiled Rebuttal, page 44), and the targeted implementation date for this parsing is the summer, 2001.

By presenting this issue to the Commission, AT&T is simply trying to "jump the line" and to obtain something that it wants earlier than it would otherwise obtain it. Moreover, it is

asking the Commission to afford AT&T with better treatment, in the sense that it wants more detailed data than BellSouth provides to its own retail units. AT&T should not be allowed to jump the line in this fashion, and its request for parsed customer service records should be allowed to proceed through the change control process in the orderly way other such requests are processed.

**(b) The Ability to Submit Orders Electronically for all services and elements.**

This sub-issue does not involve a change request that has been submitted to BellSouth, but rather relates to a larger philosophical difference that exists between AT&T and BellSouth. In order to place this sub-issue in context, some discussion of the ordering process is required.

As previously mentioned, when a new customer calls AT&T and asks for service, AT&T first uses a pre-ordering interface, such as the Telecommunications Access Gateway (TAG), to determine what is available where the customer wants service and to look at the customer's service record. Generally, the customer will dial a specific number and get an AT&T service representative. That representative sits at a computer terminal, as does the BellSouth customer service representative. AT&T has developed front-end software that allows its customer service representative to interact with its potential new customer. The AT&T front-end system for pre-ordering and ordering is integrated with BellSouth's pre-ordering and ordering interfaces, thereby enabling the AT&T service representative to obtain the necessary pre-ordering information and, when the order is ready to place, to send the order (technically the request for a service order) to BellSouth. This process flow is set forth on AT&T witness Bradbury's Exhibits JMB-30 through 32.

This sub-issue involves the fact that not every order that an AT&T customer service representative takes from AT&T's customer can be electronically transmitted to BellSouth.

Instead, for some orders, the AT&T service representative has to take the order from its potential customer, print the order out, and then manually transmit the order to BellSouth, usually by facsimile. (Transcript, page 192). When the printed order is received in the BellSouth Local Carrier Service Center (LCSC), a BellSouth worker in that center enters the order into one of BellSouth's systems, either DOE (Direct Order Entry) or SONGS (Service Order Negotiation System) (Transcript, page 200). Currently, more than 88% of orders are taken electronically for the CLEC group as a whole. (Transcript, page 203). What AT&T is asking the Commission to do in this sub-issue is to order BellSouth to accept every order electronically, if AT&T chooses to submit the order electronically. (Transcript, page 192).

There are several problems with AT&T's position. First, the orders that are involved here are generally complex orders. (Transcript, page 193). The specific computer programming and cost that would be necessary to accept such orders electronically is unknown. Second, and despite AT&T's assertions to the contrary, BellSouth's similar complex orders for its retail customers are first handled by BellSouth's account teams that then send these orders to the appropriate BellSouth service representatives for entry into the appropriate service order negotiation system. (Transcript, pages 195-200). That is, BellSouth handles these orders manually, and the orders are handled by BellSouth at least twice, just as AT&T's orders have to be handled twice. Thus, there is no discrimination in the way BellSouth's retail customer service units are treated as compared to the way that AT&T's complex orders are handled.

In spite of AT&T's assertions, it is clear that what it is seeking is simply not required of BellSouth. As was noted during the proceeding, both Bell Atlantic and SBC have now obtained approval from the FCC for the provision of interLATA telephone service. In both those proceedings, access to the incumbents' OSS was at issue, and it is clear that the fact that some

orders from CLECs had to be handled manually did not mean that the new entrants did not have parity. For instance, in its Bell Atlantic decision the FCC acknowledged that some complex orders would be submitted manually. (*Application by Bell Atlantic New York for Authorization Under Section 271 To Provide In-Region, InterLATA Service*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC 3953, released Dec. 22, 1999 (“Bell Atlantic Order”) at Paragraph 92, Footnote 230).

Clearly there is no requirement that all orders that AT&T wants to submit have to be accepted electronically by BellSouth. BellSouth does not treat its own orders that way, and cannot be required, in fairness, to expend the resources to do so on AT&T’s behalf.

**(c) Electronic processing after electronic ordering, without subsequent manual processing by BellSouth Personnel.**

The prior sub-issue dealt with the question of whether some complex orders could be required to be submitted manually, rather than electronically. That is, it addressed the question of whether AT&T would be required, for some types of orders, to submit the orders to BellSouth for entry into its OSS by facsimile, by hand or through some other process that delivered a piece of paper to BellSouth containing AT&T’s orders. The vast majority of the orders AT&T wants to place, however, can be submitted electronically. Again returning to AT&T witness Bradbury’s Exhibits JMB-30 through 32, for most orders, the AT&T service representative takes the order and enters it into AT&T’s front-end computer system. When the order is ready to be placed, the service representative hits a key, and the order electronically flows, using the EDI interface, into BellSouth’s OSS. *Id.*

A large number of these orders simply flow into another computer, where the request for service is reviewed using computer software and then passed to another program where the request is converted into service order format which the provisioning systems can accept for

processing. From that point in the process flow, when a service order is generated, AT&T's service orders are treated just like BellSouth's service orders created by BellSouth's retail operations.

This sub-issue revolves around the fact that there are certain requests for service that, instead of "flowing through" to the creation of a service order, "drop out" for manual handling by BellSouth personnel. (Transcript, pages 205-206). AT&T wants this Commission to order BellSouth to make all of AT&T's orders "flow through" electronically, without any subsequent human intervention, until the service order is in the provisioning process. This request is simply unreasonable.

This issue, too, has been discussed extensively at the FCC. In its Bell Atlantic Order, the FCC clearly recognized that while some orders "flow through," others are not designed to flow through. (*See, e.g.,* Bell Atlantic Order at Paragraph 160, Footnote 488). Similarly, in the recent FCC order involving SBC's application for interLATA relief in Texas, the FCC acknowledged that SBC's systems were not designed to allow all service order requests to "flow through." (*See, e.g. Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC-00-238, released June 30, 2000 ("SBC Order") at Paragraph 180, Footnote 490).

Consequently, it is evident that AT&T's request in this regard should not be granted. BellSouth is using its best efforts to insure that as many orders as possible flow through. It is in BellSouth's best interest that this happen, because the more orders that flow through, the fewer people BellSouth has to devote to handling these types of orders. However, at some point the economics of programming make it inappropriate to expect that every order will flow through.

The FCC has recognized this, there are perfectly good reasons why it happens, and AT&T's position on this sub-issue should not be adopted.

**ISSUE 24: Should BellSouth provide AT&T with the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA? (OSS, Attachment 7)**

Issue 24 deals with repair and maintenance interfaces that are available to CLECs so that when they get customers, they are able to address their customers' service needs. In this regard, BellSouth has made available to AT&T the exact interface that BellSouth's retail operations have access to, but AT&T wants more.

When a BellSouth subscriber calls BellSouth with a service or maintenance problem, the BellSouth representative uses a system called Trouble Analysis and Facilitation Interface (TAFI) to deal with the problem. TAFI is a human-to-machine interface (Pate Prefiled Direct, pages 13-14) that allows the representative to take the information from the customer and to do certain tests with the customer on the line. BellSouth has made the TAFI interface available to AT&T on a non-discriminatory basis. (*Id.* at 103). That is, AT&T has the exact same access to TAFI that BellSouth's retail units have to TAFI.

The issue here revolves around the fact that TAFI cannot be integrated with AT&T's front-end computer systems. (Transcript, pages 215-216). There is another system, the Electronic Communications Trouble Administration (ECTA) that is a machine-to-machine interface that could be integrated into AT&T's systems. (Pate Prefiled Direct, pages 107-108). However, ECTA does not provide certain "on-line" functions that are available with TAFI. *Id.*

AT&T's proposed solution is to either have BellSouth reprogram ECTA to have all of the functionality of TAFI or to have BellSouth create an entirely new interface that has those functions. (*Id.* at 102-103). BellSouth's view, on the other hand, is that it makes available to

AT&T the exact same functionality that its retail units have and nothing further is required in order for AT&T to have parity with BellSouth.

Once again, this is an issue that the FCC has already addressed and resolved in a manner consistent with BellSouth's positions. AT&T concedes that the FCC has not found that the lack of integration constitutes discriminatory access to the maintenance and repair systems. (*Id.* 104-105). Indeed, in the recent Bell Atlantic proceeding, the FCC stated that it specifically disagreed "with AT&T's assertion that Bell Atlantic must demonstrate that it provides an integratable, application-to-application interface for maintenance and repair." (Bell Atlantic Order at paragraph 215). The FCC specifically concluded that Bell Atlantic satisfied its obligations by "demonstrating that it offers competitors substantially the same means of accessing maintenance and repair functions as Bell Atlantic's retail operations." *Id.* In this case, as BellSouth witness Pate clearly stated, AT&T has non-discriminatory access to BellSouth's maintenance and repair interfaces, and nothing further is required. (*Id.* at 103).

Interestingly, AT&T will concede that if BellSouth can demonstrate that BellSouth has given AT&T equivalent access, the particular system offered up in this case, TAFI does not have to be integratable. (Transcript, page 219). In a bit of twisted logic, however, AT&T's witness on this issue absolutely refused to acknowledge that, but for the integration feature, BellSouth provides AT&T with equivalent access to BellSouth's maintenance and repair systems, because "I cannot separate the integration from the interface." (Transcript, page 220). In other words, the FCC is capable of saying that if BellSouth provides equivalent access, that its maintenance and repair interface doesn't have to be capable of being integrated into AT&T's front-end systems. However, for obvious reasons, AT&T refuses to acknowledge that, claiming that the

issue of integration cannot be separated. AT&T's position is simply inconsistent with the law as the FCC has pronounced it.

### **CONCLUSION**

There are a number of issues presented in this arbitration. Although some of the issues are complex, others are fairly simple. BellSouth has attempted to negotiate with AT&T in good faith, and believes that its positions, detailed above, are reasonable. On the other hand, AT&T, as BellSouth has alluded to above, is simply taking its case from state to state, hoping, for a number of its issues, that it can get some state commission, any state commission, to accept its arguments. This Commission should not be entrapped by such "forum shopping." BellSouth's positions on the issues are reasonable, well thought out, fair and should be adopted by the Commission.

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